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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,183	07/06/2001	Shigeru Matsuno	401278	3158

23548 7590 08/15/2005
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EXAMINER

BUEKER, RICHARD R

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/899,183

Applicant(s)

MATSUNO ET AL.

Examiner

Richard Bueker

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Ccontinuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

Richard Bueker
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Primary Examiner
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Continuation Sheet:

The "baffle plate" of Li (5,835,678) referred to in the rejection is the unnumbered horizontal element shown in Fig. 2 of Li that surrounds and is in contact with the tip of nozzle 24. Applicants point out that Li never uses the term "baffle plate" to describe this element. Li does not discuss this plate in his specification. In view of its location shown in Fig. 2, however, and in view of the arrows in Fig. 2 above and below the plate which illustrate the flow of curtain gas (see col. 10, lines 20-26 of Li), one skilled in the art would have understood that the purpose of the plate was to act as a baffle or distributor to distribute the flow of curtain gas around the flow of atomized mist. See also col. 11, lines 15-20 of Li. This plate shown in Fig. 2 can simply be referred to as a plate.

Applicants have pointed out that Figs. 5A and 5B of Li do not illustrate a plate at the tip of the nozzle of the type shown in Fig. 2. It is noted, however, that Li at col. 12, lines 1-13, indicates that his Figs. 4-12 illustrate a modification of the apparatus of Fig. 2. Li states that the embodiment of Figs. 4-12 "incorporates all of the principles of the apparatus discussed above and shown in Figs. 1-3, but in which the atomizer and heatable contact surface are both removable modular units". With respect to the atomizer nozzle, Li's primary additional teaching in Figs. 4-12 is that the nozzle of Fig. 2 should be modular and thus easily replaceable. Since Li intends his embodiment of Figs. 4-12 to include "all principles . . . shown in Figs. 1-3", it at least would have been obvious to include a plate for distributing curtain gas in the embodiment of Figs. 4-12 (Fig. 5B, for example). Alternatively, it would have been obvious to provide the apparatus as it is shown in Fig. 2 with a modular, easily replaceable nozzle. It is further

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noted in this regard that Li at col. 12, lines 47-50, indicates that the embodiment of Figs. 4-12 is intended to have "a curtain of gas, such as that shown in Fig. 2" (emphasis added).

Applicants have argued that the part labeled 24' of Fig. 5B and the part labeled 24" of Fig. 5A are not portions of the nozzle, but instead appear to refer to the driving portions of the ultrasonic nozzles. It is noted, however, that Li, from col. 12, line 1, to col. 13, line 4, does repeatedly refer to these parts as being his nozzle or at least part of his nozzle. Referring to Fig. 5B (see col. 12, lines 30-32), Li states "the nozzle mounting segment 25' and the ultrasonic nozzle 24" correspond to the nozzle mounting segment 25 and the ultrasonic nozzle 24 shown in Fig. 2". Li also states, for example (see sentence bridging cols. 12 and 13), that "in order to mount ultrasonic nozzle 24" onto the nozzle segment 25', as shown in Fig. 4, it is merely necessary to bolt the peripheral flange 33' (see Fig. 5b) on the ultrasonic nozzle 24' to the corresponding flange 37' on the nozzle segment 25, using bolts 39' as shown in Fig. 4. In this manner, removal and replacement of the ultrasonic nozzle itself is readily facilitated."

Li describes his modular replaceable nozzle-piece as being the nozzle. See, for example, parts 22' and 24' of Fig. 4, and the accompanying description at col. 12, lines 20-23 of Li's specification. The nozzle 24' is the modular, replaceable part that is connectable and dis-connectable to the end of the feed tube 22' that supplies the liquid to be vaporized. This is analogous to a spray nozzle that can be replaceably connected to the end of a garden hose.

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Regarding the word "adjacent", it is noted that there is really no disagreement on the meaning of this word, because its meaning is clearly defined as "near" or "close".